III. Remarks

A. Status of Claims

Claims 75-79, 80-85 have been amended without prejudice.

New claims 87-91 have been added.

Support for the amended and new claims 87 to 89 and can be found in the original claims and throughout the specification as filed, e.g., on pages 13, 24-25 and 64-66. Specifically, support for "the tampering is by crushing, shearing, grinding, chewing, dissolving in a solvent, heating, or any combination thereof" can be found, e.g., on page 13, lines 21-22, of the specification as filed. Support for "the sequestered opioid antagonist is adapted to release less than 15% by weight of the opioid antagonist within 36 hours after administration" can be found, e.g., on page 10, lines 16-17, of the specification as filed. Support for new claims 90 and 91, can be found e.g., on page 66, lines 20-23, of the specification as filed.

Claims 75 to 91 are pending.

It is respectfully submitted that no new matter has been added by virtue of the present amendments.

B. Substance of Interview

In accordance with the provisions of 37 CFR 1.133, Applicants herein make of record the substance of the interview conducted on July 22, 2008, between Applicants' attorneys, Philip C. Strassburger and Oleg Ioselevich, and Examiners Humera N. Sheikh and James-Henry Alstrum-Acevedo.

During the interview, the following references were discussed in view of the present claims and the rejections made in the Office Action of April 4, 2008: WO 99/32120 to Palermo; U.S. Patent No. 4,844,907 to Elger et al. and U.S. Patent No. 5,149,538 to Granger et al.

Applicants thank the Examiners for granting the interview, and respectfully request that the substance of interview be made of record.

C. Claims Rejections- 35 U.S.C. § 112

1. First paragraph

Claim 75 was rejected under 35 U.S.C. § 112, first paragraph. The Examiner stated that "the specification, while being enabling for a dosage form that is "chewed, crushed, ground, sheared or dissolved" does not reasonably provide enablement for a dosage form that is "tampered."" *Office Action, page 2.* The Examiner suggested that "tampered" be replaced with "chewed, crushed, sheared, ground or dissolved in a solvent." *Id.*

Claim 75 has been amended without prejudice to recite that "the tampering is by crushing, shearing, grinding, chewing, dissolving in a solvent, heating, or any combination thereof." Support for this amendment can be found, e.g., on page 13, lines 21-22, of the specification as filed.

Withdrawal of the rejection is respectfully requested.

2. Second paragraph

Claim 75 was rejected under 35 U.S.C. § 112, second paragraph. The Examiner stated that the limitation "... as compared to the dosage form that has been tampered with "is indefinite since no additional dosage form has been recited."" *Office Action, page 3.*

Claim 75 has been amended without prejudice to delete the limitation objected to by the Examiner.

Withdrawal of the rejection is respectfully requested.

D. Claim Rejections – 35 U.S.C. § 103(a)

1. Palermo publication

Claims 75-86 were rejected under § 103(a) over WO 99/32120 to Palermo ("the Palermo publication"). The Examiner stated that the "consisting essentially of" language does not exclude the presence of the additional therapeutic ingredient (i.e., agonist) of the Palermo publication. *Office Action, page 11.* The Examiner further stated that "[g]iven Applicant's disclosure at page 7, lines 20-31 as instantly presented Applicant cannot distinguish from the matrix of the reference." *Id.*

Independent claim 75 has been amended without prejudice to recite in part "particles consisting of (a) an opioid antagonist; (b) means for sequestering the opioid antagonist; and (c) one or more optional pharmaceutical excipients."

Applicants submit that the "consisting of" language excludes the presence of the opioid agonist in the particles of claim 75.

Applicants further submit that a particle prepared in accordance with the Palermo publication would necessarily include an opioid agonist, because the Palermo publication teaches to combine an opioid agonist with an opioid antagonist such that "at least a two-step extraction process" is required to separate the opioid agonist from the opioid antagonist.

Accordingly, it is respectfully submitted that the Palermo publication does not suggest particles of a sequestered opioid antagonist as recited in independent claim 75.

With regard to the Examiner's reference to page 7, lines 20-31, of the present specification, it is submitted that the embodiment described therein is directed to a dosage form comprising (i) an opioid agonist in a releasable form; (ii) sequestered naltrexone, wherein the agonist in a releasable form and the sequestered naltrexone are interdispersed. It is respectfully submitted that, in this embodiment, naltrexone is not in contact with the opioid agonist, as naltrexone is separated from the opioid agonist by the sequestering means.

Withdrawal of the rejection is respectfully requested.

With regard to new claim 87, Applicants respectfully note that the Palermo publication does not suggest particles that are "free from the opioid agonist" as recited in claim 87.

2. O'Malley patent in view of the Whitmere patent

Claims 75-86 were rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,004,970 to O'Malley et al. ("O'Malley patent") in view of U.S. Patent No. 6,120,806 to Whitmere ("The Whitmere patent"). The Examiner stated that "the limitation presented by Applicant [i.e., an opioid antagonist that is substantially not released when the dosage form is orally administered intact, as compared to the dosage form that has been tampered with"] is drawn to a future-intended use of the composition, which accords no patentable weight to the claims." *Office Action, page 12.*

Applicants respectfully disagree. Applicants submit that the features regarding sequestration *(e.g., "such that an amount of the opioid antagonist released from the dosage form which has been orally administered intact is insufficient to produce a physiological effect of the opioid antagonist in a human patient, and such that an amount*

of the opioid antagonist released from the dosage form which has been subjected to tampering will produce the physiological effect") are functional limitations and are, in fact, necessary to define "sequestration." Applicants respectfully request that these features be considered in determining patentability of the claims. *MPEP, section 2173.05(g); In re Schreiber, 128 F3d 1473 (CAFC 1997); Rowe v. Dror, 112 F33d 473 (CAFC 1997); Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F3d 1298 (CAFC 1999).*

Amended independent claim 75 recites in part "particles consisting of (a) an opioid antagonist; (b) means for sequestering the opioid antagonist; and (c) one or more optional pharmaceutical excipients, the means sequestering the opioid antagonist such that an amount of the opioid antagonist released from the dosage form which has been orally administered intact is insufficient to produce a physiological effect of the opioid antagonist in a human patient, and such that an amount of the opioid antagonist released from the dosage form which has been subjected to tampering will produce the physiological effect."

The O'Malley patent is directed to administration of certain opioid antagonists for **treatment** of nicotine dependency. The O'Malley patent therefore does not suggest, either alone or in combination with the Whitmire patent, a dosage form comprising particles of the opioid antagonist that are sequestered such that an amount of the opioid antagonist released from the unadulterated ("un-tampered") dosage form is **insufficient to produce a physiological effect** of the opioid antagonist in a human patient. In fact, such modification will render the O'Malley patent unsuitable for its intended purpose.

For the foregoing reasons, Applicants respectfully submit that the combination of the cited references does not teach a dosage form comprising particles of the sequestered opioid antagonist as recited in the present claims.

Withdrawal of the rejection is respectfully requested.

3. O'Malley patent in view of the Palermo publication

Claims 75-86 were rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,004,970 to O'Malley et al. in view of the Palermo publication.

The Palermo publication was discussed above.

The O'Malley patent is directed to administration of certain opioid antagonists for **treatment** of nicotine dependency. The O'Malley patent therefore does not suggest, either alone or in combination with the Palermo publication, a dosage form comprising particles of the opioid antagonist that are sequestered such that an amount of the opioid antagonist released from the unadulterated ("un-tampered") dosage form is **insufficient to produce a physiological effect** of the opioid antagonist in a human patient. In fact, such modification will render the O'Malley patent unsuitable for its intended purpose.

For the foregoing reasons, Applicants respectfully submit that the combination of the cited references does not teach a dosage form comprising particles of the **sequestered** opioid antagonist as recited in the present claims.

Withdrawal of the rejection is respectfully requested.

4. The Kreek patent

Claims 75-79 and 83-86 were rejected under 35 U.S.C. 103(a) over U.S. Patent No. 4,987,136 to Kreek et al. ("the Kreek patent").

The Kreek patent describes methods for controlling gastrointestinal dysmotility in humans by administration of opioid antagonists. *See Abstract.*

It is respectfully submitted that the Kreek patent dose not suggest a dosage form comprising particles of the opioid antagonist that are sequestered such that an amount of

the opioid antagonist released from the unadulterated ("un-tampered") dosage form is **insufficient to produce a physiological effect** of the opioid antagonist in a human patient. In fact, such modification will render the Kreek patent unsuitable for its intended purpose.

In response to the Examiner's statement that "not posing a risk of precipitation of withdrawal" in claim 83 and "the opioid antagonist not being bioavailable when the dosage form is intact" in claim 84 "are future-intended use limitations, which do not accord patentable weight to the claims," Applicants submit that these features are functional limitations. Accordingly, it is respectfully requested that these features be considered in determining patentability of claims 83 and 84. *MPEP, section 2173.05(g); In re Schreiber, 128 F3d 1473 (CAFC 1997); Rowe v. Dror, 112 F33d 473 (CAFC 1997); Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F3d 1298 (CAFC 1999).*

Withdrawal of the rejection is respectfully requested.

III. Conclusion

An early and favorable action on the merits is earnestly solicited. According to currently recommended Patent Office policy the Examiner is requested to contact the undersigned in the event that a telephonic interview will advance the prosecution of this application.

Respectfully submitted,
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